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In the United States Court of Appeals
for the Ninth Circuit

SCOTT LUMBER COMPANY, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

On Appeal from the United States District Court
for the Eastern District of California

PETITION OF THE UNITED STATES FOR REHEARING

CLYDE O. MARTZ,
Assistant Attorney General.

JOHN P. HYLAND,
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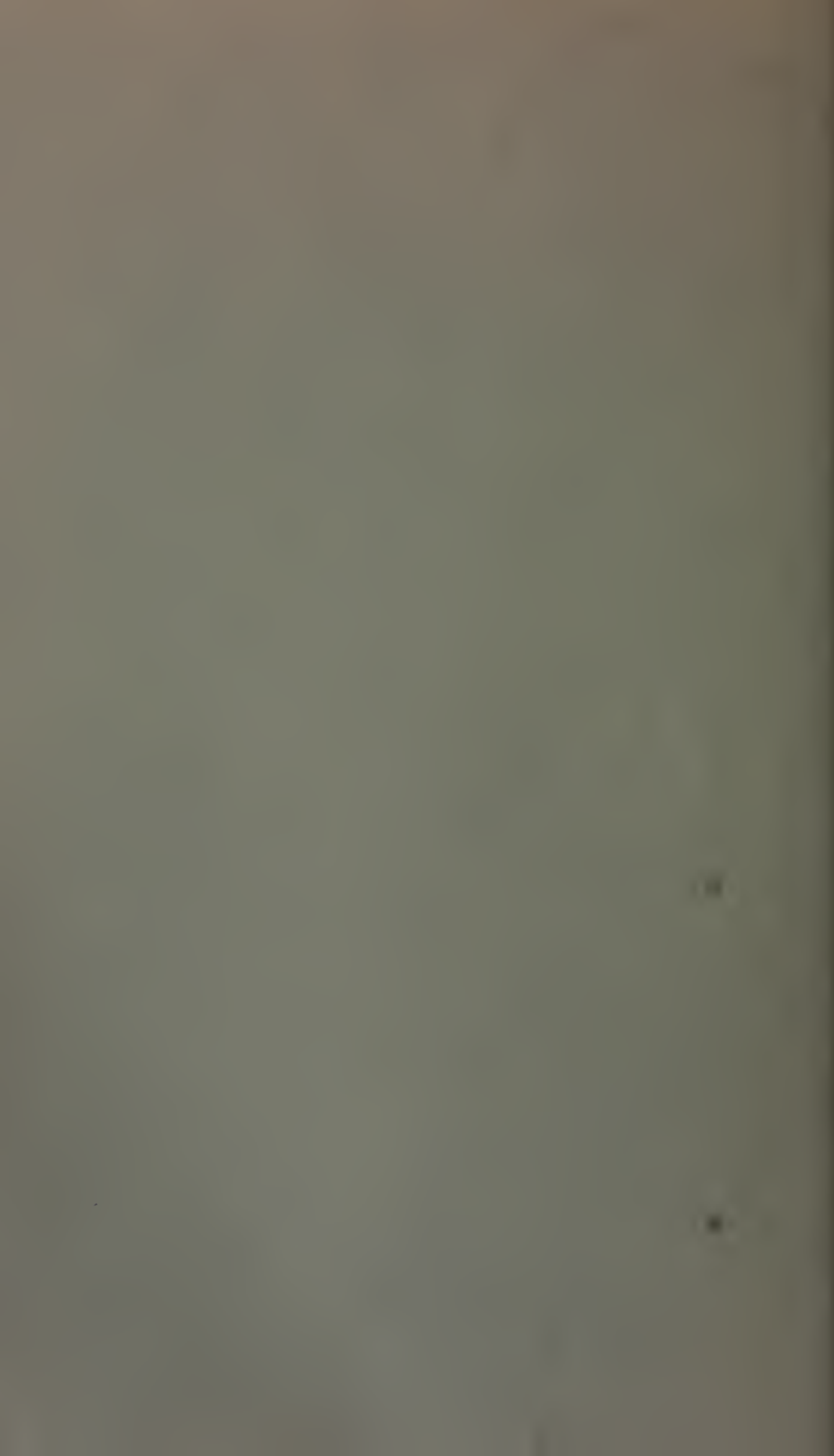
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No. 20993

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Comes now the United States of America, appellee in the above-entitled cause, and presents this petition for rehearing and in support thereof respectfully shows:

The Court has reversed the judgment of the district court without any showing whatever of error prejudicial to appellant. The Government's valuation witnesses testified that "the highest and most profitable use" of the timberland condemned here was a purchase for immediate harvest of the timber. This Court, contrary to our position, has construed that

to mean "the immediate cutting of all timber on the section leaving only stump land" in violation of the California Forest Practice Act. How did that prejudice appellant?

Not only did the Government's experts say that they were placing the highest valuation on the property, but also, under this Court's view of their testimony, they were inevitably reaching the highest possible valuations by considering the cutting of "*all*" the timber rather than by considering the restrictions of California law. There is not a word in the record to indicate that they would have arrived at higher valuations by any other method than the one they used. Therefore, since their valuations were as high as they could testify to—under this Court's view, even higher than the law permits—there was no prejudice to appellant and this Court's reversal contravenes the requirement of 28 U.S.C. sec. 2111, that appellate courts should "give judgment * * * without regard to errors or defects that do not affect the substantial rights of the parties."

Wherefore, appellee submits that a rehearing should be granted.

Respectfully submitted,

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Assistant Attorney General.

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MARCH 1968

CERTIFICATE OF COUNSEL

I, S. Billingsley Hill, counsel for the appellee in the above-entitled cause, do hereby certify that the foregoing petition for rehearing is well-founded and is not presented for the purpose of delay.

S. BILLINGSLEY HILL

